CIF 4001

(11)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Second Appeal No. 85 of 2004.

APPELLANT
PLAINTIFF : Bhondal aged 45 years, S/o Nammu Dhobi, resident of Kothari, Kachora Tah. & Distt. Korba (C.G.).

Versus

RESPONDENTS
DEFENDANTS : 1 (a) Sukhani Bai, aged 55 years W/o late Hans Ram.

(b) Sit Bai, aged 37 years D/o late Hans Ram.

(c) Ramlal, aged 35 years S/o late Hans Ram.

(d) Shyamlal, aged 32 years S/o late Hans Ram.

(e) Sita Ram, aged 27 years S/o late Hans Ram.

(f) Rajendra , aged 19 years S/o late Hans Ram.

All residents of village Kothari P.S. Urga, Tah. & Distt. Korba (C.G.)

2. Mst. Amol Kunwar, aged about 50 years Widow of late Anand Ram Dhobi.

3. Laxmi Bai , aged 22 years D/o Anand Ram Dhobi.

4. Ganga Bai, aged 21 years D/o Anand Ram Dhobi.

All residents of village Kothari, Tah. & Distt. Korba (C.G.).

5. Ganga Ram, aged 19 years S/o Anand Ram Dhobi, R/o Kothari, Tah. & Distt. Korba (C.G.).

P. R. No. 105/04 Presented by Shri S. Purohit dated 08.04.04

.....contd.....

(12)

6. State of Chhattisgarh
Through : Collector, Korba (C.G.)

MEMO OF SECOND APPEAL UNDER SECTION 100 OF C.P.C.

[illegible] against the judgement

(93)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Second Appeal No.85 of 2004

Bhondal

Versus

Sukhani Bai and others

POST FOR JUDGMENT ON 18TH AUGUST, 2004

Sd/-
L.C. BHADOO
Judge
17.8.2004

(94)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Second Appeal No.85 of 2004

Bhondal

Versus

Sukhani Bai and others

Present: -

Shri S.V. Purohit, Advocate: For the appellant

J U D G M E N T

(Delivered on 18th August, 2004)

L.C. BHADOO, J.

The plaintiff/appellant has preferred this second appeal being aggrieved by the appellate judgment and decree passed by the learned 3rd Additional District Judge (F.T.C.) Korba, in Civil Appeal No.19-A/2002 affirming the judgment and decree of 2nd Civil Judge, Class-I, Korba dated 28-2-2001 passed in civil suit No.82-A/2000 (Bhondal V. Hans Ram and others) whereby the learned trial Court dismissed the suit of the plaintiff for permanent injunction.

(2) The second appeal as per the provisions of Section 100 of the Code of Civil Procedure shall lie to this Court from every decree passed in appeal by any Court subordinate to this Court only when this Court is satisfied that the case involves a substantial question of law.

(3) I have heard learned counsel for the appellant.

(4) Whether the appellant has been able to raise any substantial question of law for consideration of this Court in this appeal? The plaintiff's case before the trial Court was that father of the plaintiff namely Nammu filed a suit before the trial Court. During the pendency of that suit Nammu died, therefore, the present appellant was substituted as plaintiff in place of his father. The case of the plaintiff was that the plaintiff and defendant Nos. 1 to 5 are the joint owners of the agricultural land of village Kothari and Kachora, which are adjoining. The agricultural lands of both the villages are

ancestral of the plaintiff and the defendants. The further case of the plaintiff was that defendant No.1 and the husband of defendant No.2, 25 years back partitioned the land with the plaintiff and the agricultural land of village Kachora, which is mentioned in para-4 of the plaint, was given to the plaintiff for which the plaintiff had no objection. The defendant No.1 and husband of defendant No.2 namely, Anandram took the land of village Kothari, thereby they partitioned their agricultural land, but so far their joint names are still appearing in the Revenue Records and since then they are cultivating the lands which fall in their share. However, husband of defendant No.2 Anandram based on fake and forged documents showed that the land bearing Khasra Nos.454, 458/1, and 460 admeasuring 2.88 acres was purchased by him from one Dukhiram and thereby he wanted to grab that land whereas, that land is of the joint ownership of plaintiff and the defendants. Defendant Nos. 1 and 2, now, want to take possession of that land. They wanted to open the stone quarry in that land and thereby they want to dispossess the plaintiff, whereas, the plaintiff is in peaceful possession since partition. Therefore, based on the partition, the plaintiff be declared as the owner of land of village Kachora and the respondents/defendants be restrained from taking possession of that land based on forged and fake documents.

(5) The defendants filed their return in which they denied relationship with the plaintiff. They also denied that the plaintiff is co-sharer in their agricultural land of village Kachora and Kothari. They further said that the land bearing Khasra Nos. 454, 458/1 and 460 admeasuring 2.88 acres was purchased by late Anandram from Dukhiram by a registered sale deed in the year 1955. Based on the pleadings of the parties the trial Court framed as many as 11 issues, the parties were allowed to adduce their evidence and after hearing counsel for the parties, the trial Court recorded the following findings:-

(i) that land bearing Khasra Nos. 454, 458/1 and 460 admeasuring 2.88 acres was purchased by Anandram from

96

Dukhiram and the remaining land bearing Khasra Nos.451, 194, 151, 458/2 and 461/1 of village Kachora is the joint property of plaintiff and the defendants.

The trial Court further held that the plaintiff has failed to prove that he is in possession of any of the lands; therefore, relief of declaration and injunction cannot be granted, as the plaintiff is not in possession and he has not sought any relief for possession.

(6) Being aggrieved by the above judgment and decree of the trial Court the plaintiff/appellant preferred first appeal which came to be decided by the 3rd Additional District Judge (F.T.C.) Korba. The judgment and decree of the trial Court was affirmed by the 1st Appellate Court vide impugned judgment and decree. Therefore, there is concurrent finding of trial Court and the 1st Appellate Court.

(7) During the course of the arguments learned counsel for the plaintiff/appellant was not able to raise any substantial question of law. A perusal of the memo of appeal shows that in the memo of appeal also almost same points have been raised which were decided by the trial Court and affirmed by the 1st Appellate Court. Counsel for the appellant/plaintiff has not been able to point out any legal flaw in these judgments. He was not able to point out how the findings of the trial Court and 1st Appellate Court are perverse or which point of law arises for decision of this Court. As has been held by the Hon'ble Apex Court in the matter of **Ram Kumar Agarwal v. Thawar Dass (dead)** reported in **AIR 1999 SC 3248** that " the High Court, in second appeal is not justified in setting aside a mixed question of law and fact" and also in the matter of **Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-un-Niswan** reported in **AIR 1999 SC 3067** the Apex Court held that "the High Court, should not interfere with the concurrent finding of fact in a routine and casual manner by substituting its subjective satisfaction in place of lower courts." In the matter of **Dnyanoba Bhaurao Shemade V. Maroti Bhauraon Marnor** reported in **1999 (2) SCC 471** the

(97)

Hon'ble Apex Court held that "the question whether a finding of fact is against the weight of evidence does not project a question of law, much less a substantial question of law." The Constitution Bench of the Supreme Court in the matter of **Chunnilal V. Mehta and Sons Ltd Versus Century Spg. And Manufacturing Co. Ltd.** reported in **1962 Supp (3) SCR 549** held as under:

> "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either and open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

Even there are no allegations that either the trial Court or 1st Appellate Court has misread the evidence or document or has given any finding contrary to the evidence or document.

(8) Both the Courts have reached the conclusion that as far as purchase of land admeasuring 2.88 acres by late Anandram, husband of defendant No.2, in the year 1955 through a registered sale deed is concerned, that stands proved and the appellant was not able to adduce any evidence showing that the sale deed was forged or fake. As far as remaining land is concerned, the trial Court and 1st Appellate Court have recorded the finding that the plaintiff and defendants are joint owners of that property. It was further held that the plaintiff is not in possession of that land also. Both the Courts have referred the evidence of the plaintiff. In para-24 of his evidence he has specifically admitted that the defendants are in possession of the land. Even some dispute arose between the parties regarding the disputed land, proceeding under Section 145 of the Cr.P.C. was initiated before the S.D.O., Revenue in which the S.D.O. also gave finding

that the defendants are in possession of the disputed property, against which the plaintiff moved criminal revision before the Sessions Court and the Sessions Court also dismissed the revision by affirming the order of the S.D.O.. Accordingly, the trial Court and 1st Appellate Court reached the conclusion that since the plaintiff is not in possession of the disputed land, therefore, plaintiff's suit for permanent injunction cannot be maintained, as he is not in possession of the land and no relief for possession has been sought.

(9) As far as the question of partition between the plaintiff and respondents 1 & 2 twenty-five years back from the day of filing of the suit, as per the finding of the trial Court as well as 1st Appellate Court the plaintiff has not been able to prove this fact that when the partition of agricultural land between him and respondents 1 & 2 was effected, even the plaintiff was not able to prove the month, year and date of the partition and no documentary evidence was produced in support of the partition. Therefore, both the Courts based on the evidence adduced by the parties reached the conclusion that the plaintiff failed to prove the fact that any partition was effected between him and respondents 1 & 2 and that the agricultural land of village Kachora, particulars of which are given in para-4 of the plaint, came into his share. I have perused the evidence and this finding of both the Courts is not erroneous in any way.

(10) On careful consideration of the evidence adduced by the parties and judgment of the trial Court, I am of the considered opinion that the trial Court and 1st Appellate Court have not committed any illegality or irregularity in arriving at the finding.

(11) In the result, the appellant has not been able to raise any substantial question of law in the matter. The appeal is liable to be dismissed at the admission stage itself and it is accordingly dismissed.

Sd/-
L.C. BHADOO
Judge

/4/8-2004

Barve